IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Murlidhar and another.
vs.
Gram Panchayat, Bap and others.

S.B.CIVIL SECOND APPEAL NO.125/2007 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 27.2.2007 PASSED BY SHRI BHARAT RAM MEENA, ADDITIONAL DISTRICT JUDGE, PHALODI, DISTRICT JODHPUR IN CIVIL APPEAL DECREE NO.2/2006.

DATE OF JUDGMENT ::: 18.4.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. SD Purohit, for the appellants.

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BY THE COURT:

Heard learned counsel for the appellant.

The appellants/plaintiffs have filed this appeal against concurrent finding of fact recorded by the two courts below in the judgment and decree dated 23.1.2006

passed by the trial court which was upheld by the first appellate court vide judgment and decree dated 27.2.2007.

Brief facts of the case are that two plaintiffs filed the suit on behalf of the villagers in representative capacity after obtaining permission under Order 1 Rule 8 CPC. The plaintiffs challenged the grant of patta dated 12.10.1999 issued in favour of the respondents no.2 to 8 and deceased defendant no.9 Kishanlal, whose legal heirs are respondents no.9 to 12. According to the plaintiffs, the land in question is village way for which patta was granted by the Gram Panchayat. According to the plaintiffs, the said property was in use by all the villagers irrespective of the castes and religion and, therefore, that property as well as land for which patta was granted including portion of land, which according to the plaintiffs was land of way, belongs to the village as a whole and the Gram Panchayat had no jurisdiction to grant patta in favour of defendants no.2 to 9.

Learned counsel for the appellants submitted that even the respondents no.2 to 12 clearly admitted that the patta was issued in their name and they further admitted that inadvertently word “dharamshala” has not been mentioned in the patta, therefore, it is clear

that the patta was granted by the Gram Panchayat to the defendants no.2 to 9 in their individual capacity. It is also submitted that from the evidence, it is clear that the property by its nature is a public property and that was not vesting in Gram Panchayat. According to learned counsel for the appellants, the two courts below have not appreciated the evidence properly and particularly, the appellate court has not considered the evidence and merely recorded that the finding of the trial court is correct.

I considered the submissions of learned counsel for the parties.

It is not in dispute that the plaintiffs have filed the suit on behalf of the villagers alleging that the suit property is the public property so far as dharamshala is concerned and rest of the land is land of chowk and way. The trial court in detail considered the statements of the plaintiffs and plaintiffs' witnesses and also the stand taken by the defendants. The plaintiffs clearly admitted that dharamshala was constructed before their birth which is more than about 60 years from the date of filing of the suit as one of the witness was of the age of 58 years and he admitted so. The plaintiffs could not produced any evidence to show that the dharamshala was managed by any other

person, persons of village Bap where the property is situated whereas admittedly at the time of filing of the suit, the property was constructed property with at least two shops and rent was recovered by the defendants no.2 to 12.

It will be worthwhile to mention here that the defendants applied for patta on behalf of dharamshala and not for getting the land for their personal use. It is none of the case that the properly belongs to any private individual. The plaintiffs' case is that the property is of the village whereas one of the community says that the property belongs to that community and the defendants no.2 to 12 are representatives of the said community. It is a conflict of interest between some of the villagers and community who is claiming possession over dharamshala.

In the totality of the facts and circumstances, the two courts below have considered the evidence of both the parties and thereafter recorded finding of fact. However, the first appellate court has not considered the evidence in detail but since it is a judgment of concurrence, therefore, if the judgment of the first appellate court is not in detail but after going through the facts of the case, this Court is of the view that no substantial question of law is

involved in this appeal.

Consequently, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya